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July 30, 1997

FEDERAL EXPRESS

Susan L. Lebeaux, Esquire
Office of General Counsel
Federal Election Commission
999 East Street
Washington, DC 20463

**RE: MUR-4719 -- New Jersey Republican State Committee;
H. George Buckwald, as Treasurer (Respondents)**

Dear Ms. Lebeaux:

Respondents, New Jersey Republican State Committee and H. George Buckwald ("RSC"), submit this response to the General Counsel's June 11, 1998 correspondence alleging that there is a reason to believe that the RSC used impermissible ratios to allocate administrative and generic voter drive expenses for shared federal and nonfederal activities in 1996. The facts support RSC's good faith in its submissions to the Federal Election Commission (the "Commission") and, in such instances, the Commission has allowed a transfer of balances within 30 days to reflect the proper ratio.

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In preparing Schedule H-1 for the 1996 election, RSC took one nonfederal allocation point for each of the offices of State Senate and State Assemblyperson. According to the Certification of Charlene Hooker, previously submitted to the Commission, the RSC submitted Schedule H-1 with its letter requesting that the Federal Election Commission contact it in the event of any questions regarding the allocation framework. The RSC spoke with the Commission and was given advice. It did not seem that a formal advisory opinion was necessary, nor was the RSC advised by the Commission's employee to seek such a formal opinion on what was ostensibly a bookkeeping question. The Statute relating to advisory opinions, 2 U.S.C. 437(a)(1) states:

any person may request in writing an advisory opinion concerning the application of the [Federal Election Campaign] Act...or any regulation prescribed by the Commission...

This Statute does not mandate that any time a candidate or a political party has a question regarding the manner in which allocations are to be reported that that entity request a formal advisory opinion.

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In the case at bar, it is the RSC's good faith belief that it was entitled to allocation of one point for the 8th District Senate seat to replace deceased Senator Haines and one point for the 21st District Assembly set to please the deceased Assemblyman Lustbader. This good faith belief was buttressed by the RSC's conversation and correspondence with the Commission.

The RSC believes that the vacancies left by both State Senator Haines and Assemblyman Lustbader entitled it to take an additional point for each office. As set forth in the RSC's November 5, 1997 submission, the Commission's prior interpretations of the purpose of 11 C.F.R. §601.5 allow a wide discretionary latitude in this regard.

In A.O.-1991-25, the Commission reviewed a point allocation under 11 C.F.R. §106.5(d)(1)(i) for a special election held in conjunction with the November, 1991 general election. The death of United States Senator Heinz caused a vacancy in the U.S. Senate seat from Pennsylvania and the point allocation was addressed by the Commission:

The vacancy for U.S. Senate in Pennsylvania, however, did not exist until April 4, 1991; and it is scheduled to be filled before the

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November, 1992 general election. It is only the period between April 4 and the date of the special election held to fill this vacancy that will be affected by a change in the ballot composition ratio.

A.O.-1991-25 at p.2. The Commission then concluded that the State Committee's should add an additional Federal point to the ballot composition ratio "for that period only, making the Federal portion 44%." Ibid.

This issue was also addressed by the Commission in A.O.-1991-6 when due to special circumstances both California United States Senate seats were up for election in 1992. In the usual course of events, only one United States seat at a time would be up for election. Addressing the special circumstance,

The Commission therefore conclude[d] that CDP must include a point for each U.S. Senate seat on the November 1992 general election ballot in its calculation of the Federal portion of its ballot composition ratio.

A.O.-1991-6 at p.4.

If the Commission determines that the RSC has committed an error in its reporting, the error was based on a logical, good faith belief that the reporting was indeed proper. In reviewing

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the single isolated reporting error of using an unexpected refund from a vendor to repay a candidate for loans the Commission held:

The Committee's one reporting error is understandable and should be forgiven. The Commission should take this opportunity to demonstrate that it protects not only the politically sophisticated, but also those who make a good faith effort to follow its regulations.

A.O.-1997-21.

CONCLUSION

Respondents respectfully request that the General Counsel advise the Commission to dismiss this Complaint with prejudice for two reasons: first, the ballot composition ratio was calculated correctly; and secondly, even if this allocation was in error, RSC had given notice to a representative of the Commission and requested that he respond if there were any problems. In instances where the miscalculation was made in good faith, the Commission has allowed a transfer of balances between accounts within 30 days to reflect the proper ratio. See A.O.-1991-15, A.O.-1983-22.

Dated: July 30, 1997

BY: 

Dorothy A. Harbeck